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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 326.

HUMBLE OIL & REFINING COMPANY, *et als.*,
Appellants,

v.

RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

BRIEF OPPOSING MOTION TO DISMISS AND APPENDIX THERETO.

T. GIRARD WHARTON,
JOHN W. FRITZ,
Attorneys for Appellants,
50 West Main Street,
Somerville, New Jersey.

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CONSTITUTION CITED.

California, Art. I, § 13 4

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BRIEF OPPOSING MOTION TO DISMISS.

This reply to the Motion to Dismiss herein is necessitated by appellee's printing, as an appendix to his Motion, only one of two petitions brought up by this appeal. As pointed out at page 10 of appellants' Jurisdictional Statement, a second petition was filed subsequent to the administrative hearing. It served to consolidate all plaintiffs in one action and was a prime pleading and a portion of the record before both the Appellate Division and the Supreme Court of New Jersey. It is set forth in full as the appendix hereto.

ARGUMENT.

POINT I.

A substantial federal question is raised by this appeal.

While appellants have endeavored in their Jurisdictional Statement to anticipate the argument set forth by the appellee in his Motion, we believe a brief reply should be made.

The Attorney General insists in his Motion that delegation of legislative power to state officers and agencies is insulated from federal due process guarantees by a state determination. This is the effect of the argument appearing at page 13 of his Motion. We respectfully submit that as long as the Fourteenth Amendment to the Constitution of the United States has vitality this proposition is unsound. This amendment was particularly designed and has been consistently utilized to prevent *state action* from transgressing the bounds of due process. To argue that a determination in the state deprives this Court of the opportunity to review because a state statute (as contrasted with a federal statute) is involved, is to urge a substantial emasculation of the Fourteenth Amendment.

Nor do we agree that the cases cited by the appellee support his conclusion.

Welsh v. *Swasey*, 214 U. S. 91 (1909), in the paragraph quoted, holds only that the Supreme Court of the United States will not disturb a state court's determination of validity *under the state constitution*, suggesting that this type determination does not raise a federal question.

To the extent that *Erie R. R. Co.* v. *Board of Public Utility Commissioners,* 254 U. S. 394 (1921), is said to suggest that the Supreme Court of the United States is disinterested in state delegation problems, *Southern Railway Co.* v. *Virginia,* 290 U. S. 190 (1933), clears the air. As in the *Erie R. R.* case, the *Southern Railway* case involved a state statute purportedly delegating authority to the state highway commissioner to eliminate grade crossings in the public interest. When the commissioner asserted this authority, without public hearing but in accordance with the delegation of the statute, the railway objected. The Supreme Court of Virginia held that the statute effectively delegated the authority claimed. This Court reversed as violative of the Fourteenth Amendment, saying at page 196:

> "The claim that the questioned statute was enacted under the police power of the State and, therefore, is not subject to standards applicable to legislation under other powers, conflicts with the firmly established rule that every state power is limited by the inhibitions of the XIV Amendment. [Citations omitted.]"

Both *Ohio* v. *Akron Metropolitan Park District,* 281 U. S. 74 (1930) and *O'Neill* v. *Leamer,* 239 U. S. 244 (1915), treat the delegation problem in a one sentence summary manner sandwiched among other substantial grounds for the holdings of the cases. The Attorney General here argues that these single sentences, extracted from the opinion, form a sound foundation for the broad generalization that the Supreme Court of the United States has no jurisdiction to consider any state delegation. While not at all clear

because of the summary treatment, in both these cases it is more likely that the Court was refusing to review the propriety of the repository of the delegated power (courts in each instance), rather than the constitutionality of the delegation in such terms of reference as standards and due process. This view is the probable one particularly in the light of *Southern Railway Co.* v. *Virginia, supra.*

In *Neblett* v. *Carpenter,* 305 U. S. 297 (1938)—the only case cited by appellee which is subsequent in time to *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495 (1935), or *Panama Refining Co.* v. *Ryan,* 293 U. S. 388 (1935)—the portion quoted by the appellee at page 15 of his motion, without saying so, appears to be simply a refusal of this Court to review a determination of the Supreme Court of California with respect to a claim of unconstitutionality *under the State constitution.* The distinction finds support in a number of ways. First, the word "again" in the quotation links this holding to the preceding several paragraphs which deal with construction of *the State law* by the highest Court of the State. Secondly, such an interpretation is supported by the second syllabus preceding the opinion. Thirdly, reference to the opinion below shows that Neblett conceded the constitutionality of the questioned provisions of the code but asserted a federal due process question not in the delegation, but in the plan and procedure employed by the administrator. *Carpenter* v. *Pacific Mutual Life Ins. Co.,* 10 Cal. 2d 307, 329, 74 P. 2d 761, 774 (1937). Finally, the California Constitution contains a due process clause. Art. I, § 13.*

* As noted in appellants' Jurisdictional Statement, the Constitution of New Jersey does not contain a due process clause.

It should be noted as well that apparently none of the cited cases involved any substantial argument with respect to standards in the delegation of legislative authority.

It is submitted that at least since the *Schechter* case, the propriety of the standards in a delegation question is a due process inquiry under the Fourteenth Amendment to the United States Constitution. The Court below, in disregarding the *Schechter* and *Panama Refining* holdings in favor of the wartime *Yakus* and *Lichter* cases, acknowledged this fact.

Conclusion.

It is respectfully submitted that a substantial federal question is presented and that the appellee's motion to dismiss should be denied.

Respectfully submitted,

T. Girard Wharton,
John W. Fritz,
Attorneys for Appellants.

SUPPLEMENTAL APPENDIX.

Petition for Declaratory Judgment—New Jersey Manufacturers Ins. Co., Mitchell-Bissell Company, Humble Oil Company, *et als.*

(Filed August 29, 1960.)

To the Honorable Judges of the Superior Court of New Jersey, Appellate Division:

The Petition of the New Jersey Manufacturers Casualty Insurance Company, a Corporation of the State of New Jersey, having its principal place of business at 363 West State Street, Trenton, New Jersey; Mitchell-Bissell Company, a Corporation of the State of New Jersey, having its principal place of business at 825 Brunswick Avenue, Trenton, New Jersey; Humble Oil Company, formerly Esso Standard Oil Company, a Corporation of the State of Delaware, qualified to do business in New Jersey and having its principal place of business at 500 North Broad Street, Elizabeth, New Jersey; Bethlehem Steel Company, a Corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at 1301 Hudson Street, Hoboken, New Jersey; Johns-Manville Products Corporation, a Corporation of the State of Delaware, qualified to do business in New Jersey and having its place of business at 200 North Main Street, Manville, New Jersey; General Motors Corporation, a Corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at Egar Road, Linden, New Jersey; Samuel Hird & Sons, Inc., a Corporation of the State of New Jersey and having its principal office at 7 Jewell Street, Garfield, New Jersey; Alan Wood Steel Company, a Corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at Dover, New Jersey; Aluminum Company of America, a Corporation of the State of Penn-

sylvania, qualified to do business in New Jersey and having a place of business at Edgewater, New Jersey; American Can Company, a Corporation of the State of New Jersey, having its principal office at 15 Exchange Place, Jersey City, New Jersey; B. F. Goodrich Company, a Corporation of the State of New York, qualified to do business in New Jersey and having a place of business at 550 Belmont Avenue, Haledon, New Jersey; The California Oil Company, a Corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at 1200 State Street, Perth Amboy, New Jersey; Crucible Steel Company of America, a Corporation of the State of New Jersey, having its principal office at P. O. Box 32, Harrison, New Jersey; Harris Structural Steel Company, a Corporation of the State of New York, qualified to do business in New Jersey, and having a place of business at New Market, New Jersey; International Harvester Company, a Corporation of the State of New Jersey having its principal office at 51 Newark Street, Hoboken, New Jersey; National Biscuit Company, a Corporation of the State of New Jersey, whose agent for services of process is Edward J. O'Mara, 1 Exchange Place, Jersey City, New Jersey; Raybestos-Manhattan, Inc., a Corporation of the State of New Jersey, having its principal office at 61 Willett Street, Passaic, New Jersey; Sears, Roebuck and Co., a Corporation of the State of New York, qualified to do business in New Jersey and having a place of business at 168 Elizabeth Avenue, Newark, New Jersey; Socony Mobil Oil Company, Inc., a Corporation of the State of New York, qualified to do business in New Jersey and having a place of business at Billingsport Road, Paulsboro, New Jersey; Westinghouse Electric Corporation, a Corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at 95 Orange Street, Newark, New Jersey; American Smelting & Refining Company, a Corporation of the State of New Jersey, having its

principal office at 15 Exchange Place, Jersey City, New Jersey; The International Nickel Company, Inc., a Corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at the Bayonne Works, Bayonne, New Jersey; and Ford Motor Company, a Corporation of the State of Delaware, qualified to do business in New Jersey, and having a place of business at Mahwah, New Jersey respectfully shows and alleges:

1. The Plaintiff, New Jersey Manufacturers Casualty Insurance Company, is a Corporation of the State of New Jersey, incorporated under an Act of the Legislature of the State of New Jersey, entitled, "an Act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State" approved April 3, 1902 (L. 1902, c. 134) and under the Acts supplementary thereto and amendatory thereof (R. S. 17:17-1 et seq.). It is primarily engaged in the business of writing casualty insurance and, more particularly, workmen's compensation insurance in the State of New Jersey and elsewhere. As such, it brings the suit on behalf of itself and on behalf of all others in the State of New Jersey similarly situate.

2. The Plaintiff, Mitchell-Bissell Company, was incorporated in New Jersey on June 6, 1894 and is primarily engaged in manufacturing. It is an insured employer in the State of New Jersey and carries its workmen's compensation insurance with the New Jersey Manufacturers Casualty Insurance Company. As an insured employer, it brings this suit on behalf of itself and on behalf of all others in the State of New Jersey similarly situate.

3. All Plaintiffs, except New Jersey Manufacturers Casualty Insurance Company and Mitchell-Bissell Company, aforesaid, are engaged in various corporate enterprises in the State of New Jersey, and, pursuant to the

provisions of R. S. 34:15-77, carry their own workmen's compensation liability insurance. As such self-insurers, they bring this suit on behalf of themselves and on behalf of all others in the State of New Jersey similarly situate.

4. The Plaintiffs are all subject to the applicable provisions of Title 54 of the New Jersey Statutes, entitled "Labor and Workmen's Compensation", R. S. 34:1-1, *et seq.*

5. The Plaintiffs are all Plaintiffs in one of two actions presently pending in the Superior Court of New Jersey, Appellate Division, entitled *New Jersey Manufacturers Casualty Insurance Company, et al.* v. *Carl Holderman, Commissioner,* Docket No. A-68-58 and *Esso Standard Oil Company, et al.* vs. *Carl Holderman, Commissioner,* Docket No. A-60-58. Plaintiffs' respective petitions and amended petitions therein, as the case may be, together with exhibits or schedules appended thereto, are incorporated herein and made a part hereof as though set forth at length.

6. Defendant, Raymond F. Male, is the successor to Carl Holderman, as Commissioner of Labor and Industry, State of New Jersey, duly appointed as such by the Governor of the State of New Jersey, pursuant to R. S. 34:1A-2 (1948).

7. Subsequent to the institution of the actions set forth in paragraph 5 above, the Superior Court of New Jersey, Appellate Division, by Order of April 14, 1959, in said actions ordered administrative hearings in relation to the rules and regulations promulgated as aforesaid and as set forth, by reference, in paragraph 5 above. Said Order is incorporated herein by reference and made a part hereof as though set forth at length.

8. Pursuant to said Order, the Defendant set the matter down for Hearing and took certain proofs and other evi-

dence. Following the receipt of these proofs and other evidence, the Defendant filed with the Superior Court of New Jersey, Appellate Division, in the actions set forth in paragraph 5 above, a Record, Findings of Fact and Conclusions. A Supplement to the Rules and Regulations of the Department of Labor and Industry and the Division of Workmen's Compensation and certain revised forms denominated L & I-1 (7-60), WC-1 (7-60), WC-2 (7-60), WC-3 (7-60), WC-4 (7-60), WC-5 (7-60), WC-6 (7-60), and WC-3A (7-60). Said Record, Findings of Fact and Conclusions, A Supplement of the Rules and Regulations of the Department of Labor and Industry and the Division of Workmen's Compensation, and the said forms are incorporated herein by reference and made a part hereof as though set forth at length, having hitherto been filed with this Court.

9. The Defendant also filed the said Supplement to the Rules and Regulations of the Department of Labor and Industry and the Division of Workmen's Compensation, together with the forms immediately referred to above, on July 13, 1960 in the Office of the Secretary of the State of New Jersey, to be "effective as of the termination date of the legal actions" set forth in paragraph 5 above.

10. Plaintiff, New Jersey Manufacturers Casualty Insurance Company alleges that the said Supplement to the Rules and Regulations of the Department of Labor & Industry and the Division of Workmen's Compensation and the forms pursuant thereto, promulgated as set forth in paragraphs 5, 6, 7, 8 and 9 above are illegal and void for the following reasons.

(a) Said supplement purports to require each insured employer to complete and mail to the Department of Labor and Industry, Bureau of Engineering and Safety and to his insurance carrier the aforesaid form L & I-1 (7-60),

designated "Employer's First Report of Accidental Injury or Occupational Disease" upon the following stated happenings:

> "(1) For every accidental injury which shall cause a loss of time from regular duties beyond the working day or shift on which the accident occurred or (2) which shall require medical treatment beyond ordinary first aid, or (3) for the occurrence of an occupational disease whether or not time is lost."

The above provision is not provided for by, and is in contravention of R. S. 34:15-96, wherein it is provided that:

> "Every employer carrying insurance as required by article 5 of this chapter shall make report in accordance with the terms of his insurance policy upon the happening of any accident of the occurrence of any compensable occupational disease in his establishment".

(b) Said supplement purports to require each insured employer to prepare and complete, upon the above stated conditions, an Employer's First Report of Accidental Injury or Occupational Disease, Form L & I-1 (7-60) which form contains some twenty-three questions prepared by the Commissioner of Labor and Industry. The said form imposes upon an employer obligations and requirements which are dissimilar to and in excess of those which may be required by the "terms of his insurance policy" and is in contravention of and not authorized by R. S. 34:15-96.

(c) Said supplement, insofar as it requires Form L & I-1 (7-60) to be prepared and completed under the circumstances stated in (a) above, and insofar as it is required to contain the information noted in (b) above, is in excess of the limitations set forth in R. S. 34:15-96 and constitutes

an illegal assumption of legislative authority by the Commissioner of Labor and Industry in violation of said statute.

(d) Insofar as said Form L & I-1 (7-60) shall require the reporting of an accident or the setting forth of information in addition to requirements of the terms of an employer's insurance policy, it is an impairment of the obligation of contract and in contravention of the Constitution of the State of New Jersey and the Constitution of the United States.

(e) The multiple information required of the employer on the said Form L & I-1 (7-60), required to be completed and forwarded at the start of the second work day after the injury occurred entails an unreasonable burden upon the employer and is in contravention of R. S. 34:15-96, 98.

(f) Said Form L & I-1 (7-60), demands the compilation and submission of data which bears no reasonable relationship to the obligation of the employer or its insurance carrier to make payments of compensation or to the reasonable functions of the Division of Workmen's Compensation, such obligation or function arising only after the expiration of 7 days from the date of injury where time has been lost or upon the occurrence of permanent disability or the contraction of a compensable occupational disease, as set forth in R. S. 34:15-96, 98.

(g) Said Form L & I-1 (7-60) demands the compilation and submission of data which bears no reasonable relationship to the provisions relating to the submission of statistical data as set forth in R. S. 34:1-49, 52 and, in any event, constitutes the illegal assumption of legislative authority by the Commissioner of Labor and Industry in violation of said statute.

(h) Said modification and supplement purports to require employers to file with the Division of Workmen's Compensation, on the "Employer's Report to Div. of Workmen's Compensation of Accidental Injury or Occupational Disease", Form WC-1 (7-60), the date when the employee returned to work or will probably return and requires of the insurance carrier to advise the Division, on the Final Report of Accident, Form WC-3 (7-60); the employer, on Final Report of Accident, Form WC-4 (7-60); the injured workmen, on Final Report of Accident, Form WC-5 (7-60); and itself as insurance carrier, on Final Report of Accident, WC-6 (7-60); of the date the injured resumed work. This information is in contravention of and unauthorized by the provisions of R. S. 34:15-98, wherein it is relevant to set forth only that the "employee has recovered so as to be *able* to resume work" (emphasis supplied). The requirement of this information exceeds the limitation set forth in the said statute and constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute, and bears no reasonable relationship to the purpose for which such information might reasonably be sought.

(i) Said Form L & I-1 (7-60) demands the compilation and submission of data and its completion and mailing within a time which bears no reasonable relationship to the functions of the Department of Labor and Industry or its several component Divisions and Bureaus, the said requirements being without the jurisdiction of the Commissioner of Labor and Industry to impose and in contravention of the several reporting and record-keeping requirements set forth in R. S. 34:1-1, *et seq.*

(j) Said modification and supplement requires the insurance carrier to complete and mail to the Division of

Workmen's Compensation a form entitled "Insurer's Initial Notice of Accident, and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case," designated WC-2 (7-60). Said form entails the submission of data concerning the cost of medical aid to be paid, which data is unknown and unobtainable within the period of 21 days after the happening of an accident or obtaining knowledge of an occupational disease. The requirement of its submission is unreasonable, arbitrary, capricious and in direct contravention of the uncontradicted evidence adduced before the Commissioner of Labor and Industry in the Hearing set forth above. The remainder of the said form requires the re-submission of data already possessed by the Division of Workmen's Compensation and serves no reasonable function thereof.

(k) Said modification and supplement purports to require the insurance carrier to file with the Division of Workmen's Compensation, Department of Labor and Industry, on said Form WC-3 (7 60), a Final Report of Accident, which is to contain Detailed X-ray Findings (Question 18), Detailed Diagnosis of Physician (Question 19), General X-ray Findings (Question 20A), and General Diagnosis (Question 21), and other medical information. The aforesaid requirements are contrary to the provisions of R. S. 34:15-98 in that they require information beyond the period of disability and subsequent to the time the "employee has recovered so as to be able to resume work," as provided in R. S. 34:15-98. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of insurance carriers with respect to the submission of medical information in reports of accidents or compensable diseases. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an assumption of legislative authority by the Commissioner of Labor and Industry in violation of such statute and otherwise.

(l) The said Supplement, insofar as it relates to the subject of (k), *supra*, is directly contrary to the express legislative intention to require only certain minimum information directly related to the obligation to pay compensation as set forth in R. S. 34:15-96, 97, 98 and in contravention of the specific provisions of R. S. 34:15-100 insofar as the latter refers to individual cases in which the information requested is only obtainable when the employer or insurance carriers shall be directed so to do.

(m) Said Supplement purports to require the insurance carrier to file with the Division of Workmen's Compensation, Department of Labor and Industry for the specific purpose of distribution to the employee, on said Form WC-5 (7-60), general information already known to the employee, with the exception of Questions 20a, 21, 22, 27 and 28. The said form, with the exception of the questions noted, is contrary to R. S. 34:15-98 and is onerous, unreasonable and oppressive, insofar as it unnecessarily requires a third person to advise the injured workman of information already possessed by him without the pendency of any litigation.

(n) Said Supplement purports to require the insurance carriers to file with the Division of Workmen's Compensation, Department of Labor and Industry, on said Forms WC-3 (7-60) and WC-5 (7-60), in the latter instance for the publication by mailing to the address of the employee, information required in the first instance by Questions 18, 19, 20a, 21, 22, 27 and 28, and, in the second instance, insofar as the same is required by Questions 20a, 21, 22, 27, 28, Detailed X-ray Findings, Detailed Diagnosis of Physician, General Diagnosis and X-ray Findings, and other medical information. The aforesaid requirements are contrary to the provisions of R. S. 34:15-98 and contrary to the provisions of R. S. 34:15-99, insofar as the same is in *pari*

materia therewith. The submission of the required data, insofar as it relates to medical information, will be forwarded to the employee without regard to his own best interests and the requirement therefor is in contravention of public policy. The same would require an insurance carrier, in specific instances, to make public through its physician or otherwise, a diagnosis of a venereal disease, contrary to the provisions of R. S. 26:4-41. The requirement that the insurance carrier directly apprise the employee of the information contained in the questions hereinabove set forth is in direct contravention of the uncontradicted evidence adduced and is an arbitrary, capricious and unreasonable requirement.

(o) To the extent that the said R. S. 34:15-96, 97, 98 require employers and insurance carriers to prepare and submit informational forms to the Division of Workmen's Compensation and to the employee without requiring the same or similar disclosures by the employee, which forms may be used as evidence of the data therein contained, the said sections are unconstitutional as denying the said employers and insurance carriers due process and equal protection of the law.

(p) To the extent that Forms L & I-1 (7-60), WC-1 (7-60), WC-2 (7-60), WC-3 (7-60), WC-4 (7-60), WC-5 (7-60), WC-6 (7-60) and WC-3A (7-60) are required to be submitted to the Department of Labor and Industry and/or the Division of Workmen's Compensation and are further to be made available to or mailed directly to litigant or potential litigant employees, without requiring the same or similar disclosures by employees or barring the receipt of said forms in evidence in administrative hearings, the use of said forms and the requisite of their submission is unconstitutional as denying the said employers and insurance carriers due process and equal protection of the law.

(q) To the extent that the said forms are designed to be used and will be used by hearing officials in all cases, their submission and use encourages and fosters the consideration of non-evidential and ex parte statements all of which is violative of the intent of R. S. 34:15-56, in contravention of manifest public policy and effects a denial of due process and equal protection of the law.

(r) This Plaintiff further alleges that the said Supplement and the said Forms promulgated in connection therewith as aforesaid, are so ambiguous, confusing, duplicitous and contradictory as to make compliance with the purported requirements thereof impossible.

(s) This Plaintiff further alleges that said Supplement is not necessary to carry out the purpose of the Workmen's Compensation Statute, as required by R. S. 34:15-102, and is therefore illegal and void.

(t) This Plaintiff further alleges that said Supplement is arbitrary, unreasonable, capricious, discriminatory and oppressive and is therefore illegal and void and contrary to the provisions of the Constitution of the United States and the Constitution of the State of New Jersey.

(u) This Plaintiff further alleges that the effect of said Form WC-5 (7-60), designed to be forwarded to the injured is calculated to and will have the effect of promoting litigation and unduly burdening the facilities of the Division of Workmen's Compensation and the Courts of this State, in contravention of public policy, insofar as the same is required to be prepared and designed to be mailed to the employee, without regard to the duration or severity of the injury or occupational disease and without regard to the obligation of the employer or its insurance carriers to make payment of compensation.

(v) This Plaintiff further alleges that to the extent that the information demanded on the said Forms is unnecessary

to carry out the intent of Chapter 187, L. 1924, and is unnecessary to reasonably "check on the operations of the insurance company", then the provisions of R. S. 34:15-96, 97, 98 are unconstitutional and void in that they fail to set up reasonable criteria for the guidance of their administration and enforcement and constitute an unconstitutional delegation of legislative authority.

(w) This Plaintiff further alleges that to the extent that the information demanded on the said Forms is unnecessary to carry out the expressed intent of Chapter 187, L. 1924 and is unnecessary to reasonably "check on the operations of the insurance company", then the actions of the Commissioner of Labor and Industry in the absence of reasonable criteria are void and constitute an unconstitutional assumption of legislative authority.

(x) This Plaintiff further alleges that the Commissioner of Labor and Industry, in 1956, sought authority from the Legislature of the State of New Jersey, to promulgate the same or similar rules which presently are sought to be enforced. To that end, there were incorporated in Assembly No. 568, Assembly Bills 1956, referred to as a General Revision of the Workmen's Compensation Act, pertinent Paragraphs 11 and 12, attached as an Exhibit to the petition set forth in paragraph 5 above. At the time the legislation was introduced certain other parts thereof were passed and became law, but the cited paragraphs were refused passage by the Legislature. The Commissioner of Labor and Industry has herein sought to accomplish, by the assumption of Legislative power, the end which was unsuccessfully sought to be accomplished through proper legislation.

(y) The said Supplement, together with the said Forms, were promulgated by the Commissioner of Labor and Industry without proper or sufficient hearing, thereby depriving

the parties affected of the right to introduce evidence or otherwise object or make their position known relative to the said Supplement and Forms. This course, affecting the substantial rights of this Plaintiff, is arbitrary and capricious and deprived the Plaintiff of due process of law and is otherwise in violation of the Constitution of the State of New Jersey and the Constitution of the United States.

(z) The said Supplement and Forms are in direct contravention of the legislation enacted as part of the laws of 1924, Chapter 187, as consistently interpreted by the Division of Workmen's Compensation, charged with their administration, to require the submission of certain information requested on forms previously employed by the Division from that time, some of which forms are attached to the petition set forth in paragraph 5 above, and also, the said Supplement and Forms are in direct contravention to the long honored interpretation by the Division under the statutes as they have existed unchanged since 1924.

(aa) Insofar as said Supplement and Forms, and particularly said Form L & I (7-60), requires a telephone call or telegram in the case of every injury requiring hospitalization, they are unreasonable, arbitrary, capricious and contrary to law.

(bb) The conduct of the Hearing by the Commissioner of Labor and Industry was violative of the Order of this Court of April 14, 1959, entered in the causes set forth in paragraph 5 above and was arbitrary, unreasonable and violative of due process.

(cc) The "Record and Findings of Fact and Conclusions of Commissioner of Labor and Industry" filed herein are devoid of factual findings sufficient to support the conclusions reached and the modification which proceeded therefrom and evince a capricious and arbitrary disregard of and failure to consider the evidence adduced.

(dd) This Plaintiff further alleges that to the extent that Title 34 of the Revised Statutes of the State of New Jersey permits the valid promulgation of the said Supplement and its modifications, said statutes are contrary to the provision of the Constitutions of the United States and of the State of New Jersey.

11. Plaintiff, Mitchell-Bissell Company alleges that the said Supplement to the rules and regulations of the Department of Labor and Industry and the Division of Workmen's Compensation and the forms pursuant thereto, promulgated as set forth in paragraphs 5, 6, 7, 8 and 9 above, are illegal and void for the following reasons:

(a) This Plaintiff repeats, incorporates and makes a part hereof as though set forth at length all the allegations of all sub-paragraphs of paragraph 10 above.

12. All Plaintiffs other than those in paragraphs 10 and 11 above, that is to say, all self-insured Plaintiffs, allege that the said Supplement to the Rules and Regulations of the Department of Labor and Industry and the Division of Workmen's Compensation and the forms pursuant thereto, promulgated as set forth in paragraphs 5, 6, 7, 8 and 9 above, are illegal and void for the following reasons:

(a) These Plaintiffs repeat and incorporate and make a part hereof, as though set forth at length, all of the relevant allegations of all sub-paragraphs of paragraph 10 above insofar as the same is applicable to the self-insured plaintiffs.

(b) Said Supplement purports to require self-insured employers to file with the Department of Labor and Industry, on said Form L & I-1 (7-60), reports of all accidental injuries to employees,

> "* * * which shall cause a loss of time from regular duties beyond the working day or shift on which

the accident occurred or (2) which shall require medical treatment beyond ordinary first aid or (3) for the occurrence of an occupational disease whether or not time is lost".

The aforesaid requirements are contrary to the provisions of R. S. 34:15-97, which require such reports only for accidents or compensable occupational diseases causing a disability extending beyond the waiting period (specified to be seven days by R. S. 34:15-14 (1945)) or causing any permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry to promulgate rules and regulations and defines the obligations of self-insured employers with respect to the reporting of accidental injuries. The exceeding of such limitations and the extension of such obligation by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(c) Said Supplement purports to require the aforesaid reports to be made no later than the start of the second work day after an injury occurs, or to be forwarded immediately in the case of a "fatal or serious injury". The aforesaid requirements are contrary to the provisions of R. S. 34:15-97, which require the submission of reports only upon the expiration of the seven day waiting period or immediately upon the employer's having knowledge of a permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of self-insured employers with respect to the time within which accident reports are to be prepared and submitted. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(d) Said Supplement purports to require self-insured employers to file with the Division of Workmen's Compensation, Department of Labor and Industry, on said Form WC-3 (7-60), a Final Report of Accident, which is to contain medical x-ray findings, a general diagnosis of the injury and other medical information. The aforesaid requirements are contrary to the provisions of R. S. 34:15-97 to the extent that they require information beyond the length of disability and the nature and extent of permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of self-insured employers with respect to the submission of medical information in reports of accident. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(e) Said Supplement purports to require self-insured employers to prepare on said Form WC-5 (7-60), a copy of the Final Report of Accident, referred to in sub-paragraph (c) above, including general x-ray findings and general diagnosis, to be furnished to the employee. The aforesaid requirements are contrary to the provisions of R. S. 34:15-97 to the extent that they require information beyond the length of disability and the nature and extent of permanent injury, and to the extent that they require the furnishing of reports to others than the Division of Workmen's Compensation of the Department of Labor and Industry. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligation of employers with respect to the submission of medical reports. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal

assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(f) Said Supplement purports to require self-insured employers to supply, at their own expense, the forms for the reports which are to be submitted to the Division of Workmen's Compensation, Department of Labor and Industry. The aforesaid requirement is contrary to the provisions of R. S. 34:15-97, which requires that such forms be furnished to self-insured employers by the Division of Workmen's Compensation. The aforesaid statute places the obligation of supplying such forms upon the Division of Workmen's Compensation of the Department of Labor and Industry, and the attempt to impose this obligation upon self-insured employers by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(g) These Plaintiffs further allege that to the extent said Supplement purports to require self-insured employers to prepare on said Form WC-5 (7-60), a copy of the Final Report of Accident, including general x-ray findings and general diagnosis, to be furnished to the injured employee, such amendments are contrary to law and public policy in that the same will require the disclosure of information specifically prohibited by statute R. S. 26:4-41 (1945) in particular, and may require the furnishing of information to the employee without regard to his own best interests.

(h) These Plaintiffs further allege that to the extent said Supplement purports to require self-insured employers to prepare on said Form WC-5 (7-60), a copy to the Final Report of Accident, including general x-ray findings and general diagnosis, to be furnished to the injured employee,

such amendments are calculated to and will have the effect of promoting workmen's compensation claims and litigation, thereby placing an undue burden upon the facilities of the Division of Workmen's Compensation and the Courts of this State and requiring the adjudication of claims made without regard to the legal obligation of the self-insured employers to make payments of compensation.

(i) Said Supplement and the Forms promulgated in connection therewith are so ambiguous, confusing and contradictory, as to render compliance with the purported requirements thereof impossible.

(j) Said Supplement is not necessary to carry out the purpose of the Workmen's Compensation Statutes as required by R. S. 34:15-102 and are therefore illegal and void.

(k) Said Supplement is arbitrary, unreasonable, capricious, discriminatory and oppressive and is therefore illegal and void and contrary to the provisions of the Constitutions of the United States and of the State of New Jersey.

(l) These Plaintiffs further allege that to the extent Title 34 of the Revised Statutes of the State of New Jersey permits the valid promulgation of the said Supplement, said statutes are contrary to the provisions of the Constitutions of the United States and of the State of New Jersey.

WHEREFORE, Plaintiffs respectfully pray:

(1) That this action be for all purposes consolidated with the actions set forth in paragraph 5 above.

(2) That this Court adjudge that the purported amendments to the rules of the Defendant, set forth in paragraphs 4 and 5 above, exceed the power of the Commissioner and the State Department of Labor and Industry, and are illegal and void.

(3) That the Defendant be permanently enjoined from the promulgation and enforcement of such amendments, and

(4) That the Petitioners have such other and further relief in the premises as may be just and proper.

EDWARD B. MEREDITH,
Attorney for New Jersey Manufacturers
Casualty Insurance Company and
Mitchell-Bissell Company, Plaintiffs.

WHARTON, STEWART & DAVIS,
Attorneys for the Remaining Plaintiff
Self-insurers,

By: JOHN W. FRITZ,
The Partner Acting for the Firm.

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